Supreme Court, U.S.
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No. 92-374

In The

SUPREME COURT of the UNITED STATES

October Term 1992

ROBERT J. STANDRING

Petitioner, Pro Se

vs.

RALPH A. McALLISTER

Respondent.

REPLAY TO

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petition also reaffirms his original Question:

Whether Respondent had statutory or common law immunity to violate Petitioner's civil rights to Due Process and Equal Protection of the **Fourteenth Amendment** to the United States Constitution by conducting an *ad hoc* (or secret) trial while acting under color of office?

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Respondent.

On Petition for Writ of Certiorari to the Untied States Court of Appeals for the Sixth Circuit.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The Petitioner respectfully invokes Supreme Court Rule 15.6 to correct material and misleading statements found in "Respondent's Brief in Opposition."

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The **Fourteenth Amendment** to the US Constitution is set forth in Appendix A, and **42 USC § 1983** is set forth in Appendix B.

SUMMARY OF ARGUMENT

1. Petitioner's request for writ of certiorari should be granted because Respondent's (R1) misconduct under color of office violated Petitioner's civil rights to the *Due Process* and *Equal Protection* clause of the **Fourteenth Amendment**.

2. Respondent is *not* immune, because the *custom* clause in **42 USC § 1983** precludes immunity if the alleged misconduct occurred while Respondent acted in clear absence of jurisdiction to violate the statute.

3. Under the common law doctrine of absolute judicial immunity, Respondent's (R1) misconduct during and outside the proceedings of Case No. 186651 was *not normal* nor *reasonable conduct*. Furthermore, Respondent has misapplied the Supreme Court's two-part test in this action.

CORRECTIONS TO STATEMENT OF FACTS

In Respondent's version of Petitioner's case, Respondent failed to include Petitioner's challenge to Respondent's jurisdiction, which occurred on July 20, 1990—*33 days prior* to the official date of trial.

The reason why this is materially important is because Respondent raised the issue of jurisdiction. To omit such an important fact might lead the Court to erroneously conclude that Respondent's conduct was tacitly sanctioned or agreed to by Petitioner, when in fact it was instanter challenged for cause!

Because of this error by omission, Petitioner and Respondent substantially differ as to whether the alleged misconduct falls *within* Respondent's jurisdiction, or lies *outside* Respondent's jurisdiction.

Respondent contends that *Stump v. Sparkman* 435 US 349, 356-57 (1978) has established the precedent, while Petitioner contends that the Court's opinion in *Scheuer v Rhodes* 416 US 232 (1974) should be applied.[1]

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[1] Respondent also cites obsolete case law that occurred prior to the enactment of more modern legislation.

If the Court is of the opinion that cited precedents are not applicable to the particular facts and circumstances of Petitioner's action, than new case precedent is warranted with appropriate guidelines for judicial conduct.

The Court's opinion of Petitioner's federal question will establish to what degree a trial judge *may* or *may not* become directly or personally involved in any litigation.

REASON FOR GRANTING PETITION

I.
Judicial Conduct is the Issue —Not Judicial Error.

Respondent argues for *absolute judicial immunity* and by linkage declares that "When a litigant believes that a presiding judge has committed error, the litigant may seek his remedy through appellate review, not by suing the presiding judge." (R1 p. 7)

In most cases that is a valid argument, but not with the case at bar. Petitioner's case deals with *judicial conduct*, not judicial errors.[2]

[2]The judicial errors involving Case No. 186651 were in fact appealed on seven separate assignments of error. To date, none of those errors have been remedied upon appeal.

Respondent has raised the collateral issue of judicial error, hoping to camouflage or confuse the main issue.

All the lower court opinions have failed to address the issue of the Respondent's conduct. The lower courts have never asked: Were the Respondent's acts those which are normally conducted or performed by a trial judge?

As a result, the tests established by the Supreme Court have never been applied, but rather tacitly avoided.

II.
Respondent's Conduct Was Not "Within" Respondent's Jurisdiction.

Respondent asserts that: "Judge McAllister has absolute judicial immunity from liability for the claims asserted by Petitioner under 42 USC § 1983." (R1 p. 7)

Based upon the *custom* clause, this is not true. The *Pierson v. Ray*, 386 US 547, 554 (1967) needs to be reexamined if it is projecting this conclusion, because the Court also emphasized that acts had to be *"within"* judicial jurisdiction. It is misleading for Respondent to insert a phrase like "*within his or her official capacity and judicial jurisdiction*" (R1 p. 7), when Respondent is fully aware that this case exclusively pertains to *conduct taken in the*

absence of proper judicial forum.[3]

III.
Supreme Court's Two-Part Test Not Properly Applied.

It is true, the Supreme Court has set forth guidelines in the form of a two-part test to determine whether judicial immunity applies in a given action: But Respondent has only applied *half the test* established by the Supreme Court.

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[3]In his dissenting opinion in the *Pierson v. Ray*, id, Justice Douglas reminded the Court that:

> I do not think that all judges, under all circumstances, no matter how outrageous their conduct are immune from suit under . . . 42 USC § 1983. The Court's ruling is not justified by the admitted need for a vigorous and independent judiciary, is not commanded by the common-law doctrine of judicial immunity, and does not follow inexorably from our prior decisions. . . .
>
> The congressional purpose seems to me to be clear. A condition of lawlessness existed in certain of the States, under which people were being denied their civil rights. Congress intended to provide a remedy were not unaware that certain members of the judiciary were implicated in the state of affairs which the statute was intended to rectify. It was often noted that "[i]mmunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.

If Justice Douglas' observations are correct, then it might be reasonable to conclude that we no longer have a *citizenry* of constitutional government, but rather *subjects* of judicial ternary.

Therefore, it is reaching to assume that absolute immunity should be granted, when only half the test is being applied.

The portion of the test *not applied* states:

> **Whether the *general conduct* in question is the kind *normally performed* by a judge.**

Herein lies the crux of the confusion. When the Respondent held *ex parte* meetings with opposing counsel—was that *normal conduct*? When Respondent coached witnesses to give false testimony—was that *normal conduct*? When Respondent obviated lawfully issued subpoenas—was that *normal conduct*? When Respondent ordered the Petitioner's case secretly moved forward three days—was that *normal conduct*? When Respondent covered up the uttering of a forgery—was that *normal conduct*? When Respondent served as second-chair legal counsel for Xerox—was that *normal conduct*? And finally, when Respondent conducted a physical search without warrant and then proceeded to suspend Petitioner's Constitutional Rights—was that *normal conduct*?[4]

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[4] Again, the Court should look at the total general conduct to determine whether this is merely a matter of judicial error or does this constitute a pattern of judicial misconduct. Perhaps the proper legal remedy lies within a Class Action Suit.

If this two-part test is to be applied, then the Court will have to decide what constitutes *normal conduct*.

CONCLUSION

Respondent's conduct outlined in this case not only shocks the conscience, it brings shame upon the ministry of law. And now Respondent seeks the Court's absolution for his shameful misconduct without penance.

Respondent, himself, was the instrument of his own doing when he implemented a hidden agenda, which was clearly perpetrated for the express purpose of depriving Petitioner of equal access and due process of law.

Accordingly, Petitioner reaffirmed his request for a writ of certiorari to issue.

Respectfully submitted,

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Appendix A

XIV Amendment to the U.S. Constitution

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix B

42 USC § 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, *custom*,[§] or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[§] In use of the word *custom* in the statute, it implies unwritten common law doctrines and discriminatory traditions.